IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10215 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PULIN D SHAH

Versus

STATE OF GUJARAT

Appearance:

MR PRADEEP PATEL for Petitioner No. 1-2

Mr. H.C. Patel, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/12/2002

ORAL JUDGEMENT

Heard learned advocate Mr. P.J. Patel for the petitioner and Mr. H.C. Patel, learned A.G.P. for the respondents. This petition was admitted by this Court by

issuing rule thereon and interim relief in terms of para 11(C) was granted. By way of this petition, the petitioner has challenged the order dated 14th June, 1994 passed by the Deputy Collector, Dabhoi under section 65 of the Bombay Tenancy Act which is at Annexure-A to this petition. Learned advocate Mr. P.J. Patel appearing for the petitioner has raised a contention that on behalf of the petitioner, one advocate Mr. R.B. Bhatt had appeared before the Deputy Collector, Dabhoi in response to the summons issued by the the Deputy Collector, Dabhoi and written statement was filed; oral submissions were also made by him on behalf of the petitioner. It was his submission that whatever evidence produced by the Talati cum Mantri and the Mamlatdar was required to be examined by the Deputy Collector, Dabhoi and the same is required to be proved by the authority before the the Deputy Collector, Dabhoi. It was also his submission that an opportunity ought to have been given to the petitioner to cross examine the concerned officer. He also disputed the fact that they are not residing at village Limda, Taluka Vaghodia ; on the contrary, it was his submission that they are residing at village Limda and are having house there and are doing the agricultural activities through some labourers and, therefore, ultimately, it was his submission that the notice issued by the Deputy Collector, Dabhoi is illegal and the same is required to be declared as illegal and be withdrawn. Mr. P.J. Patel further submitted that though specific contention was raised by the learned advocate Mr. Bhatt on behalf of the petitioner before the Deputy Collector, Dabhoi, however, none of the contentions raised on behalf of the petitioner were examined by the Deputy Collector, Dabhoi. He further submitted that looking to the conclusions drawn and the observations made by the Deputy Collector, Dabhoi, that the copy of the village form no. 7/12, pani patrak reflected that from 1989-90 to 1993-94, the lands in question had remained without cultivation, it is clear that such conclusions were drawn by the Deputy Collector, Dabhoi only on the basis of the report submitted by the Talati cum Mantri, Mamlatdar Vaghodia who had examined the existing possession and position of the land in question and prepared the panchanama on 11th February, 1993 and on the basis of such material, concluded that this land is not cultivated by the petitioners and the petitioners are not residing at village Limda but are residing at Mumbai and also residing 8 km away from the land in question and, therefore, section 2(6) of the Act has been violated. In view of this conclusion, it was concluded that the land remained without cultivation for more than two years continuously and, therefore, he in exercise of the powers under section 65 of the Act,

passed these orders and the management thereof was assumed by the Government. In view of this, it was submitted by Mr. Patel that section 65 of the Act itself, it is incorporated that the Government may pass appropriate orders after making such inquiry as it thinks fit. He further submitted the report which was submitted by the Talati cum Mantri and thereafter by the Mamlatdar and the panchanama drawn by the Mamlatdar has not been proved on record by examining any concerned officer before the Deputy Collector. It was his submission that no right of cross examination of such witnesses has been given to the petitioner or his advocate and without giving any such opportunity to the petitioner or his advocate, the Deputy Collector has taken into account the entire report and panchanama submitted by the Talati Cum Mantri as well as the Mamlatdar by the Deputy Collector, Dabhoi as conclusive evidence without giving an opportunity to the petitioner to cross examine the concerned officer who has submitted such report and panchanama. He has submitted that, therefore, the order passed by the Deputy Collector, Dabhoi is contrary to the principles of natural justice and, therefore, same is liable to be quashed and set aside. In support of his submissions, he has relied upon the decision in case of Sanjaybhai Induprasad Bhatt versus State of Gujarat reported in 2000 (3) GLH 768 and submitted that the scope of section 65 as well as inquiry contemplated under said section was examined by this court in the said case and it was held by this Court that whatever the report of the talati cum mantri and the Mamlatdar as well as the panchanama is required to be proved before the authority by leading proper evidence and proper opportunity is also required to be given to the person for cross examining such officer who has submitted such report or panchanama and if such material and otherwise, it amounts to the violation of the principles of natural justice.

On the other hand, learned Asstt. G.P. Mr. H.C. Patel has submitted that the impugned order dated 14th June, 1994 was challenged by the petitioner after a period of about seven years and therefore, since that delay has not been properly explained by the petitioner, therefore, present petition is liable to be dismissed on the ground of delay alone. He further submitted that the authority was right in acting under section 65 of the Tenancy Act and before initiating the proceedings under section 65 of the Act, show cause notice was given to the petitioner; the petitioner was represented by the advocate engaged by him before the authority concerned and after considering the relevant record submitted by the Talati cum Mantri as well as the Mamlatdar and the

panchanama as well as the reply and submissions made by the advocate for the petitioner, the Deputy Collector, Dabhoi has rightly decided the matter that the petitioner had failed to prove that the land in question was being cultivated by the petitioner for more than two years and, therefore, his conclusions are based upon the relevant record and no error has been committed by the authority which would require interference of this court in exercise of the powers under Article 226/227 of the Constitution of India and, therefore, this petition is required to be dismissed even on merits. It was also his submission that the affidavit in reply has been filed by the Deputy Collector and the same may also be taken into consideration.

I have considered the submissions made by the learned advocates for the parties. As regards the contention raised by Mr. H.C. Patel, learned A.G.P. on behalf of the respondents, that the petition is liable to be dismissed on the ground of delay, in para 7 of the petition, the petitioner has made averments as regards delay of seven years. In para 7 of the petition, the petitioner has contended that the land owner Shri Dhirajlal Shah had passed away in the year 1990 and the proceedings were initiated in the year 1993 and the impugned order came to be passed on 14.6.1994; though petitioner no.1 had filed the reply, no order was communicated to him or to the petitioner no.2; in the order dated 14.6.1994, it is specifically stated to inform the petitioner in writing about the passing of the order dated 14.6.94 but no such order is ever communicated to the petitioner; that Shri Shashikant Dhruve whose address appear in the title of the order had also died in or about 1993; that the petitioner inquired in the matter of paying revenue for the disputed land and at that stage, it was given to understand that the disputed land has vested in the Government and Talati asked to deliver the possession of the land; that the petitioners were not served with the notice under section 135-D of the Land Revenue Code before entering the name of the Government by the Talati in the Village Form No. 7 and 12 for the disputed land; that one Bhagwatbhai Shah who is close family friend of the petitioner made necessary inquiry and thereupon he advised the petitioner to apply for certified copy of the order dated 14.6.1994 and accordingly the application was made to get copy of the order passed on 14.6.1994 on 17.2.2001 and same was actually delivered by the authority to the petitioner on 12.3.2001 and thereafter, the petitioners obtained legal advice in the matter and have filed the present petition before this Hon'ble Court and on the basis of these

submissions made in para 7 of the petition, the petitioners have prayed for condoning the delay. Thus, the petitioners have explained the delay of about seven years for challenging the order dated 14.6.1994. According to my opinion, considering this explanation tendered by the petitioner, the explanation is sufficiently justifying the delay. The petitioners have given reasons for not challenging the order passed by the authority immediately and have specifically submitted that the order dated 14.6.1994 has not been communicated to the petitioners and it is not the case of the respondents in their affidavit in reply that the order in question was communicated or served upon the petitioners. It is also necessary to note that the address mentioned in the cause title of the order dated 14.6.1994 in respect of Shashikant Dhruve has also died in the year 1993 and, therefore, naturally the petitioners would be unaware about the result of the proceedings and, therefore, according to my opinion, the delay has rightly been explained by the petitioners and, therefore, the submission made by Mr.H.C. Patel that the petition is required to be dismissed on the ground of delay alone cannot be accepted and, therefore, such submission made by the learned AGP is rejected.

It is also necessary to note one more aspect that according to my opinion, once the petition has been admitted by issuing rule thereon, then, the question of delay would become irrelevant and the petition cannot be thrown away only on the ground of delay and once the matter is admitted, same is required to be decided on merits. The view of the apex court in this regard is to the effect that once the matter has been admitted by the court, then, subsequently at the time of final hearing of the matter, it cannot be dismissed only on the ground of delay. Therefore, in that view of the matter also, this petition cannot be dismissed on the ground of delay, at the time of final hearing.

As regards the merits of the matter, it is clear from the order itself at page 7 annexure-A that whatever submissions made by the learned advocate Mr. Bhatt on behalf of the petitioners before the Deputy Collector, Dabhoi were considered and whatever record has been produced by the authority namely talati cum mantri and Mamlatdar before the Deputy Collector, Dabhoi is required to be produced and proved by examining the talati cum mantri and the Mamlatdar but in this case, the talati cum mantri and the Mamlatdar who submitted report and panchanama were not examined before the Deputy Collector, Dabhoi and the petitioners or their advocate were not

given any opportunity to cross examine the said officers and without affording such opportunity to the petitioners, said documents were considered by the Deputy Collector concerned as conclusive proof or evidence against the petitioners and on the basis of such documents, order impugned in this petition was passed against the petitioners. It is also necessary to take into account the contention raised by the learned advocate Mr. Bhatt on behalf of the petitioner before the Deputy Collector were not taken into account by the Deputy Collector, Dabhoi. Relying upon the report submitted by the talati cum mantri as well as the Mamlatdar dated 11th February, 1993 and also relying upon the fact that the petitioner is residing at 8 km away from the disputed land, the authority held that there was violation of section 2(6) of the Act. These are the conclusions drawn by the Deputy Collector on the basis of the report of the talati and Mamlatdar and the panchanama but for that, no opportunity has been given to the petitioner and, therefore, according to my opinion, said order dated 14.6.1994 passed by the Deputy Collector, Dabhoi is contrary to the principles of natural justice which has been contemplated under section 65 of the Act and in such inquiry under section 65 of the Act, reasonable opportunity is required to be given but in this case, no opportunity has been given to the petitioner and, therefore, according to my opinion, said order dated 14th June, 1994 passed by the Deputy Collector, Dabhoi is suffering from the vice of non application of mind and is contrary to the principles of natural justice and, therefore, considering the law laid down by this court in aforesaid decision, the order dated 14th June, 1994 is required tobe quashed and set aside.

In the result, this petition is allowed. Order dated 14th June, 1994 is quashed and set aside. Rule is made absolute accordingly. There shall be no order as to costs.

5.12.2002 (H.K. Rathod,J.)

Vyas